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OFFICE OF THE  
EXECUTIVE SECRETARY

**BEFORE THE TENNESSEE REGULATORY AUTHORITY**

**NASHVILLE, TENNESSEE**

**IN RE:**

**SHOW CAUSE PROCEEDING AGAINST  
MINIMUM RATE PRICING, INC.**

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**DOCKET NO.: 98-00018**

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**BRIEF OF THE AUTHORITY'S STAFF  
ON THE ISSUE OF JURISDICTION**

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COMES NOW the Consumer Services Division of the Tennessee Regulatory Authority ("Authority's Staff"), by and through its counsel, and files this Brief on the Issue of Jurisdiction in support of its position in this matter. Based upon the Bankruptcy Code, particularly 11 U.S.C. Section 362(b)(4) as amended in 1998 by PL 105-277, 112 Stat 2681, as well as federal case law, the Authority's Staff respectfully requests that the Tennessee Regulatory Authority find jurisdiction in this matter, and expeditiously exercise its police and regulatory power to protect the public interest of the state of Tennessee.

**Procedural History**

This matter originally came before the Tennessee Regulatory Authority ("TRA") upon the TRA's *Order Requiring Minimum Rate Pricing, Inc. to Appear and Show Cause Why A Cease and Desist Order, Fine and/or Order Revoking Authority Should Not Be Issued*; such order was entered on July 27, 1998. This matter went to a hearing on the merits before the TRA on November 24, 25, December 10 and 11, 1998. Minimum Rate Pricing, Inc. ("MRP") filed a

petition under Chapter 11 of the Bankruptcy Code, 11 U.S.C. § 1101, *et seq.*, with the United States Bankruptcy Court for the District of New Jersey, Newark Division, on February 26, 1999.

Due to “information and belief” relative to MRP’s bankruptcy filing, the Consumer Advocate Division of the Office of the Attorney General and Reporter (“CAD”) filed with the TRA on March 24, 1999 a *Motion for Exercise of Police and Regulatory Power to Protect the Public Interest*; such motion contended that public interests of the state of Tennessee would be irreparably harmed unless the TRA were to act expeditiously on this matter. In light of this motion, on April 1, 1999 this matter was placed on the TRA’s *Final Conference Agenda*, which notified the parties that at the regular Authority Conference scheduled for April 6, 1999, certain action would be taken relative to the show cause proceeding against MRP.

According to the TRA’s *Order Reflecting Action Taken at April 6, 1999, Authority Conference*, at the April 6th Conference the Directors’ intended action was to deliberate on the merits and render a decision pursuant to the four days of hearings in November and December 1998, as well as considering all late-filed exhibits, the post-hearing briefs and the proposed findings of fact and conclusions of law of each party. However, on “April 5, 1999, the Authority received a letter filing from Walter Diercks, Esq., counsel for Minimum Rate Pricing, Inc., in which Mr. Diercks advised the Authority for the first time that Minimum Rate Pricing, Inc. had filed a petition in bankruptcy on February 26, 1999, and that he was of the opinion that this matter ‘has been automatically stayed by Section 362 of the Bankruptcy Code, 11 U.S.C. Section 362.’”<sup>1</sup> Mr. Diercks’ letter further opined that “[a]ny issue regarding the scope and effect of the

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<sup>1</sup> TRA’s *Order Reflecting Action Taken at April 6, 1999, Authority Conference*, quoting letter of Walter E. Diercks to K. David Waddell, April 2, 1999, p.1.

automatic stay and any request for relief from the automatic stay must be presented to and resolved by the United States Bankruptcy Court for the District of New Jersey, Newark Division.” Therefore, instead of deliberating on the merits, the Directors appointed Chairman Malone to serve as Hearing Officer on this issue of jurisdiction, and directed the parties to file briefs in support of their position relative to the issue of whether the TRA has jurisdiction to proceed to deliberate this matter on the merits in light of the automatic stay under the Bankruptcy Code, 11 U.S.C. § 362.

### **ARGUMENT**

The Authority’s Staff contends that the TRA has jurisdiction and should proceed immediately to deliberate on the merits of this matter due to the following: (a) 11 U.S.C. § 362(b)(4) as amended is clear on its face that there is no stay applicable to the TRA, therefore, the TRA has never lost jurisdiction, and (b) federal case law, particularly the Sixth Circuit Court of Appeals, has made it equally clear that the forum, not the Bankruptcy Court, is to determine whether the governmental unit’s action is precluded by the “automatic stay.”

#### **A. 11 U.S.C. § 362(b)(4) as amended is clear on its face.**

Upon the filing of a bankruptcy petition, Section 362 of the Bankruptcy Code, 11 U.S.C. §362, provides debtors with an “automatic stay” against certain collection activities to enable them some breathing room, but Section 362 simultaneously allows governmental units to enforce their police or regulatory power in certain circumstances where the stay is simply inapplicable. In 1998, Congress passed PL 105-277, 112 Stat 2681, which amended §362 and thereby clarified the boundary between the automatic stay and the rightful exercise of police and regulatory power.

Subsections (a) and (b) of §362 are germane to the instant matter, and paragraphs (a)(1)-(3), (a)(6) and (b)(4)-(5) follow as they existed prior to the 1998 amendment; further, the language that is directly relevant has been emphasized:

**§ 362. Automatic stay**

(a) **Except as provided in subsection (b) of this section, a petition** filed under section 301, 302, or 303 of this title, or an application filed under section 5(a)(3) of the Securities Investor Protection Act of 1970, **operates as a stay, applicable to all entities, of--**

(1) **the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the case under this title**, or to recover a claim against the debtor that arose before the commencement of the case under this title;

(2) the enforcement, against the debtor or against property of the estate, of a judgment obtained before the commencement of the case under this title;

(3) any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate; . . .

(6) any act to collect, assess, or recover a claim against the debtor that arose before the commencement of the case under this title; . . .

(b) **The filing of a petition** under section 301, 302, or 303 of this title, or of an application under section 5(a)(3) of the Securities Investor Protection Act of 1970, **does not operate as a stay--**

(4) **under subsection (a)(1) of this section, of the commencement or continuation of an action or proceeding by a governmental unit to enforce such governmental unit's police or regulatory power;**

(5) **under subsection (a)(2) of this section, of the enforcement of a judgment, other than a money judgment, obtained in an action or proceeding by a governmental unit to enforce such governmental unit's police or regulatory power; . . .**

Once the text that is not relevant to the instant matter recedes, Section 362 is clear on its face. Subsection (b) is a good example: “**The filing of a petition . . . does not operate as a stay**” --- provided certain circumstances are met. To clarify those circumstances, Congress acted last

October by deleting paragraphs (4) and (5) so as to replace them both with one broader subsection, which follows (the text relevant to the instant matter is underlined, while the new clarifications are emphasized):

Section 362(b) of title 11, United States Code, is amended--

(1) by striking paragraphs (4) and (5); and

(2) by inserting after paragraph (3) the following:

"(4) under paragraph (1), (2), (3), or (6) of subsection (a) of this section, of the commencement or continuation of an action or proceeding by a governmental unit or any organization exercising authority under the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction, opened for signature on January 13, 1993, to enforce such governmental unit's or organization's police and regulatory power, **including** the enforcement of a judgment other than a money judgment, obtained in an action or proceeding by the governmental unit to enforce such governmental unit's or organization's police or regulatory power;".

PL 105-277, 112 Stat 2681.

With this amendment, Congress extended the circumstances under which the mere filing of a petition does not trigger an automatic stay to include paragraphs (3) and (6), in addition to paragraphs (1) and (2) of subsection (a). Now, a governmental unit can exercise its police and regulatory power to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate, or to collect, assess, or recover a claim against the debtor that arose before the commencement of the case under this title. Further, with the use of the word "including," this amendment reiterates that a governmental unit can exercise its police and regulatory power to enforce any judgment, other than a money judgment, which it obtained in an enforcement action or proceeding.

There can be no dispute that the TRA is a governmental unit that is endowed by the Tennessee General Assembly with police and regulatory powers. The TRA is seeking the continuation, indeed, the TRA is seeking the resolution of an administrative, regulatory proceeding,

the purpose of which is to enforce both state law and the TRA's own rules and regulations. The TRA commenced this show cause proceeding many months prior to MRP filing its bankruptcy petition. While the TRA may ultimately enter a money judgment along with other judgments, the TRA is not now trying to enforce a money judgment.

Section 362 of the Bankruptcy Code, 11 U.S.C. § 362(b)(4) as amended, is clear on its face. The February 26, 1999 filing by MRP of a bankruptcy petition does not, in the instant case with the TRA, operate as an automatic stay. Therefore, if no stay relative to MRP is applicable to the TRA, then the TRA's jurisdiction relative to MRP has never been in question.

B. The nonbankruptcy forum, not the Bankruptcy Court, is to determine whether the governmental unit's action is precluded by the "automatic stay."

The Supreme Court of the United States has some compelling things to say relative to the issue of which forum is to determine the applicability of the automatic stay. In *Board of Governors of the Federal Reserve System v. MCorp Financial, Inc., et al.*, 502 U.S. 32, 112 S.Ct. 459, 116 L.Ed.2d 358 (1991), on page 39-42, Justice Stevens wrote the following (emphasis added):

The filing of a bankruptcy petition operates as an automatic stay of several categories of judicial and administrative proceedings. [FN9] The Board's planned actions against MCorp constitute the "continuation ... [of] administrative ... proceeding[s]" and would appear to be stayed by 11 U.S.C. § 362(a)(1). **However, the Board's actions also fall squarely within § 362(b)(4), which expressly provides that the automatic stay will not reach proceedings to enforce a "governmental unit's police or regulatory power."** [FN10]

FN9. The automatic stay provision provides in relevant part:

"(a) Except as provided in subsection (b) of this section, a petition filed under section 301, 302, or 303 of this title, or an application filed under section 5(a)(3) of the Securities

Investor Protection Act of 1970 (15 U.S.C. 78eee(a)(3)), operates as a stay, applicable to all entities, of--

"(1) the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the case under this title, or to recover a claim against the debtor that arose before the commencement of the case under this title; . . .

"(3) any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate; . . .

"(6) any act to collect, assess, or recover a claim against the debtor that arose before the commencement of the case under this title...." 11 U.S.C. § 362(a).

FN10. Title 11 U.S.C. § 362(b)(4) provides:

"(b) The filing of a petition under section 301, 302, or 303 of this title, or of an application under section 5(a)(3) of the Securities Investor Protection Act of 1970 (15 U.S.C. 78eee(a)(3)), does not operate as a stay-- . . .

"(4) under subsection (a)(1) of this section, of the commencement or continuation of an action or proceeding by a governmental unit to enforce such governmental unit's police or regulatory power...."

MCorp contends that in order for § 362(b)(4) to obtain, a court must first determine whether the proposed exercise of police or regulatory power is legitimate and that, therefore, in this litigation the lower courts did have the authority to examine the legitimacy of the Board's actions and to enjoin those actions. **We disagree. MCorp's broad reading of the stay provisions would require bankruptcy courts to scrutinize the validity of every administrative or enforcement action brought against a bankrupt entity. Such a reading is problematic, both because it conflicts with the broad discretion Congress has expressly granted many administrative entities and because it is inconsistent with the limited authority Congress has vested in bankruptcy courts. We therefore reject MCorp's reading of § 362(b)(4).**

MCorp also argues that it is protected by §§ 362(a)(3) and 362(a)(6) of the Bankruptcy Code. Those provisions stay "any act" to obtain possession of, or to exercise control over, property of the estate, or to recover claims against the debtor that arose prior to the filing of the bankruptcy petition. MCorp contends that the ultimate objective of the source of strength proceeding is to exercise control of corporate assets and that the § 23A proceeding seeks enforcement of a prepetition claim. [Please note that while this is a 1991 case, in 1998 Congress added §§ 362(a)(3) and 362(a)(6) to the applicability, or lack thereof, of § 362(b)(4).]

**We reject these characterizations of the ongoing administrative proceedings. At this point, the Board has only issued "Notices of Charges and of Hearing" and has expressed its intent to determine whether MCorp has violated specified statutory and**

**regulatory provisions.** It is possible, of course, that the Board proceedings, like many other enforcement actions, may conclude with the entry of an order that will affect the Bankruptcy Court's control over the property of the estate, but that possibility cannot be sufficient to justify the operation of the stay against an enforcement proceeding that is expressly exempted by § 362(b)(4). **To adopt such a characterization of enforcement proceedings would be to render subsection (b)(4)'s exception almost meaningless.** If and when the Board's proceedings culminate in a final order, and if and when judicial proceedings are commenced to enforce such an order, then it may well be proper for the Bankruptcy Court to exercise its concurrent jurisdiction under 28 U.S.C. § 1334(b). **We are not persuaded, however, that the automatic stay provisions of the Bankruptcy Code have any application to ongoing, nonfinal administrative proceedings.** [FN11]

FN11. The Board suggests that the automatic stay provisions of § 362 do not themselves confer jurisdiction on the bankruptcy court, and thus that the filing of a bankruptcy petition operates as an automatic stay only where the bankruptcy court's jurisdiction has not already been precluded by a statute like § 1818(i)(1). We need not address this question in light of our determination that the automatic stay does not apply to the Board's ongoing administrative proceedings.

The Supreme Court is clear that a governmental unit's administrative proceeding need not defer to the Bankruptcy Court, and the Court is also clear that administrative agencies, like the TRA, have the ability to determine whether the stay is applicable to its police and regulatory powers under a given set of circumstances. The Sixth Circuit Court of Appeals, the TRA's circuit and the circuit in which MRP's alleged violations of statutes and rules have occurred, is very direct and even more to the point on this issue.

In *National Labor Relations Board v. Edward Cooper Painting, Inc.*, 804 F.2d 934 (6th Cir., 1986), the court opined, on pages 938-941, as follows (emphasis added):

Respondent contends that the bankruptcy court has exclusive jurisdiction to determine the coverage, modification, or termination of the automatic stay. Therefore, respondent argues, we should "remand" this case to the bankruptcy court for a determination of whether the NLRB proceeding was excepted from the stay. We disagree, because the applicability of the automatic stay to an unfair labor practice proceeding is an issue of law within the competence of this court. See *In re Baldwin-United Corp. Litigation*, 765 F.2d 343, 347 (2d Cir.1985).



Respondent cites our decision in *NLT Computer Services Corp. v. Capital Computer Systems, Inc.*, 755 F.2d 1253 (6th Cir.1985) for the proposition that only the bankruptcy court has jurisdiction to determine the applicability of the exceptions to the automatic stay. Respondent places particular reliance on our statement in *NLT Computer* that "[t]he stay provisions of section 362 are automatic and self-operating and those who have knowledge of the pendency of a bankruptcy action and stay are bound to honor the stay unless and until it is properly lifted." *Id.* at 1258.

Respondent's reliance on this passage is misplaced because the statement was grounded on the assumption that the stay otherwise applied to the non-bankruptcy judicial proceeding, and that the bankruptcy court therefore was the proper court to determine whether the stay should be lifted. In the course of providing the procedural posture of the case, we stated:

"In an opinion filed on January 31, 1983, the district court held that it was not prohibited from proceeding upon the merits of the government's claim despite the automatic stay provisions of 11 U.S.C. § 362, because it possessed the power to withdraw the order of reference of the involuntary proceedings to the bankruptcy court and then lift the automatic stay provisions which would otherwise apply."

*Id.* at 1256 (emphasis added). None of the litigants in *NLT Computer* asserted that the non-bankruptcy judicial proceeding was excepted from the automatic stay. The statement on which respondent relies was made in a non-bankruptcy judicial proceeding that was not even arguably excepted from the automatic stay.

Here, the NLRB contends that its proceeding against the Corporation is excepted from the § 362(a)(1) automatic stay because the NLRB proceeding is "an action or proceeding by a governmental unit to enforce such governmental unit's police or regulatory power," and, as such, excepted from the automatic stay by § 362(b)(4).

The decision of the Second Circuit in *Baldwin-United Corp.* is the only case which has explicitly held that the district and circuit courts have jurisdiction to determine the applicability of the automatic stay. However, in the context of an NLRB petition for enforcement of an unfair labor practice decision and order, two other circuit courts have assumed they had jurisdiction to answer the question and proceeded directly to the merits. See *Ahrens Aircraft, Inc. v. NLRB*, 703 F.2d 23 (1st Cir.1983); *NLRB v. Evans Plumbing Co.*, 639 F.2d 291 (5th Cir.1981). *Evans Plumbing* was the first circuit court decision to hold that an NLRB unfair labor practice proceeding was excepted from the automatic stay under § 362(b)(4).

**We agree with the statement by the court in *Baldwin* that:**

**"The court in which the litigation claimed to be stayed is pending has jurisdiction to determine not only its own jurisdiction but also the more precise**

**question whether the proceeding pending before it is subject to the automatic stay."**

Baldwin-United Corp., 765 F.2d at 347 (footnote omitted). We hold that we have jurisdiction to determine whether the NLRB unfair labor practice proceeding was subject to the automatic stay.

## II.

**Respondent next argues that the NLRB's order is void because the NLRB failed to petition the bankruptcy court for relief from the automatic stay before it proceeded with the unfair labor practice hearing. It also argues that the NLRB was required to petition the bankruptcy court for relief from the stay even though it believed that its proceeding was excepted from the stay. This contention has no support in the case law, and we conclude that a governmental unit which determines that its police power or regulatory proceeding is excepted from the automatic stay under § 362(b)(4) is not required to petition the bankruptcy court for relief from the stay prior to continuing its proceeding.**

Section 362(b)(4) provides that the filing of a petition in bankruptcy "does not operate as a stay ... of the commencement or continuation of an action or proceeding by a governmental unit to enforce such governmental unit's police or regulatory power." The statute provides that governmental actions to enforce police or regulatory powers are automatically excepted from the operation of the automatic stay. **There is no occasion therefore to seek relief from a stay which has no application to the proceeding in question.**

**In addition, the legislative history of the Bankruptcy Act of 1978 evinces a congressional intent that "an action by a governmental unit seeking to enforce its regulatory power is not automatically stayed by reason of the provisions of subsection (b)(4) but might nonetheless be enjoined by the [bankruptcy] court in appropriate circumstances."** 2 Collier on Bankruptcy ¶ 362.05 at 362-40 (15th ed. 1985). [FN3]

FN3. The legislative history of the police power exception of the automatic stay provides:

"Subsection (b) lists seven exceptions to the automatic stay. The effect of an exception is not to make the action immune from injunction.

"The court has ample other powers to stay actions not covered by the automatic stay. Section 105, of proposed title 11, derived from Bankruptcy Act § 2a(15), grants the power to issue orders necessary or appropriate to carry out the provisions of title 11. The district court and the bankruptcy court as its adjunct have all the traditional injunctive powers of a court of equity, 28 U.S.C. §§ 151 and 164 as proposed in § 2266, § 201, and 28 U.S.C. § 1334, as proposed in § 2266, § 216. Stays or injunctions issued under these other sections will not be automatic upon the

commencement of the case, but will be granted or issued under the usual rules for the issuance of injunctions. **By excepting an act or action from the automatic stay, the bill simply requires that the trustee move the court into action, rather than requiring the stayed party to request relief from the stay.** There are some actions, enumerated in the exceptions, that generally should not be stayed automatically upon the commencement of the case, for reasons of either policy or practicality. Thus, the court will have to determine on a case-by-case basis whether a particular action which may be harming the estate should be stayed. . .

"Paragraph (4) excepts commencement or continuation of actions and proceedings by governmental units to enforce police or regulatory powers. Thus, **where a governmental unit is suing a debtor to prevent or stop violation of fraud, environmental protection, consumer protection, safety, or similar police or regulatory laws, or attempting to fix damages for violation of such a law, the action or proceeding is not stayed under the automatic stay.**

"Paragraph (5) makes clear that the exception extends to permit an injunction and enforcement of an injunction, and to permit the entry of a money judgment, but does not extend to permit enforcement of a money judgment. Since the assets of the debtor are in the possession and control of the bankruptcy court, and since they constitute a fund out of which all creditors are entitled to share, enforcement by a governmental unit of a money judgment would give it preferential treatment to the detriment of all other creditors."

S.Rep. No. 989, 95th Cong., 1st Sess. (1978), reprinted in 1978 U.S.Code Cong. & Ad.News 5787, 5837-38 (emphasis added).

**We hold that the NLRB, acting on the belief that its unfair labor practice proceeding was excepted from the operation of the automatic stay, permissibly proceeded with the hearing without obtaining relief from the stay in the bankruptcy court.** However, the NLRB proceeded at its own risk. **If it was later determined that the proceeding was not excepted from the automatic stay, the entire NLRB proceeding would be void ab initio as an act taken in violation of the stay.** [FN4] Nonetheless, an action by a governmental unit in the exercise of its police or regulatory powers is not void merely because it was taken in the belief that it was excepted from the automatic stay.

FN4. See, e.g., Borg-Warner Acceptance Corp. v. Hall, 685 F.2d 1306, 1308 (11th Cir.1982) ("Actions taken in violation of the automatic stay are void and without effect."); In re Potts, 142 F.2d 883, 888 (6th Cir.1944), cert. denied, 324 U.S. 868, 65 S.Ct. 910, 89 L.Ed. 1423 (1945) (state court judgment obtained after effective date of automatic stay is void).

**Section 362(b)(4) explicitly provides that proceedings undertaken by a governmental unit in the exercise of its police power are unaffected by the automatic stay. [FN5] Only if we find the action did not fall within the ambit of the § 362(b)(4) exception to the automatic stay will we declare the governmental unit's action void.**

FN5. Our decision in *In re Mansfield Tire & Rubber Co.*, 660 F.2d 1108 (6th Cir.1981), is not to the contrary. There, the Ohio Bureau of Workers' Compensation sought permission to adjudicate worker's compensation claims filed by employees of the bankrupt debtor. The bureau petitioned the bankruptcy court to lift the automatic stay on the basis of the § 362(b)(4) and (5) exceptions. Whether Ohio could process the worker's compensation claims without petitioning for relief from the stay was not at issue. We reversed the judgment of the bankruptcy court and vacated the stay, but **we did not hold that a governmental unit exercising its police or regulatory powers must always petition the bankruptcy court for relief from the stay.** See D. Cowans, 2 Bankruptcy Law & Practice § 11.3 at 255 (1986).

Arguably, a more orderly procedure would require the NLRB to petition the bankruptcy court for permission to proceed. "[C]entralizing construction of the automatic stay in the Bankruptcy Court" would result in "uniformity on issues of law," and would assist that court's effort to "assure equality of treatment among creditors." *Baldwin-United Corp.*, 765 F.2d at 349. However, § 362 does not impose such a requirement, and **the legislative history of that section provides that "[b]y excepting an act or action from the automatic stay, the bill simply requires that the trustee move the court into action, rather than requiring the stayed party to request relief from the stay."** S.Rep. No. 989, 95th Cong., 1st Sess. (1978), reprinted in 1978 U.S.Code Cong. & Ad.News at 5837.

Our conclusion does not leave the trustee or debtor-in-possession unable to halt the unfair labor practice proceeding. The legislative history of the Bankruptcy Act of 1978 states: "The Court has ample other powers to stay actions not covered by the automatic stay. Section 105, of the proposed title 11, derived from Bankruptcy Act § 2a(15), grants the power to issue orders necessary or appropriate to carry out the provisions of title 11."

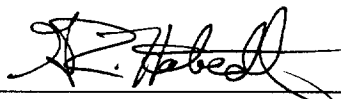
S.Rep. No. 989, 95th Cong., 1st Sess. (1978), reprinted in 1978 U.S.Code Cong. & Ad.News at 5837. The bankruptcy courts have concluded that 11 U.S.C. § 105 gives them the power to stay NLRB proceedings that are excepted from the operation of the automatic stay by § 362(b)(4) if the assets of the debtor's estate are threatened. See, e.g., *In re GHR Energy Corp.*, 33 B.R. 449, 450-51 (Bankr.D.Mass.1983). Cf. *In re Organized Maintenance, Inc.*, 47 B.R. 791, 797-98 (Bankr.E.D.N.Y.1985).

On March 4, 1999, this case was cited for authority by the United States Bankruptcy Appellate Panel of the Sixth Circuit *IN RE Singleton, Jr. v. Fifth Third Bank of Western Ohio, et al.*, 1999 WL 106976 (6th Cir.BAP (Ohio)). It is still very good law in Tennessee.

### CONCLUSION

The TRA has jurisdiction to proceed to deliberate this matter on the merits because MRP's automatic stay under the Bankruptcy Code, 11 U.S.C. § 362, is inapplicable to the TRA under the existing circumstances.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "G. Hotvedt", written over a horizontal line.

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**CERTIFICATE OF SERVICE**

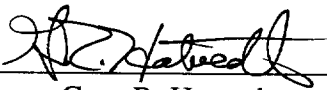
I hereby certify that on April 14, 1999, a copy of the foregoing document was served on the parties of record, via facsimile and U.S. Mail, postage pre-paid, addressed as follows:

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